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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/955,894
Filing Date: September 19, 2001
Appellant(s): COCCARO ET AL.

Edward A. Squillante, Jr.
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/8/05 appealing from the Office action
mailed 3/2/05.

In response to the remand from the board of patent appeal of 3/6/06, all elements of the current Examiner's Answer remain unchanged from the Examiner's Answer of 10/21/05, except that the "Evidence Relied Upon" section has been changed to reflect the prior art used in the final rejection.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct. The Examiner further adds that Claim 7 was substantively rejected on its merits in the final action, despite, a typographical error made on the PTO form 326 leaving out Claim 7.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,578,763	Brown, Laurie J.	6-2003
5,522,428	Duvall, Paul F.	6-1996
6,766,218 B2	Rosenblum, Ken	7-2004
JP411185164A	Maniwa et al	7-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,578,763) in view of Maniwa et al (JP 11185164A). Brown discloses the following method for purchasing a consumer product.

As described in Claim 1;

- a. selling a consumer product (detergent) in a package (a bottle/container) to a consumer at a point of purchase establishment;
- b. instructing the consumer to retain the package after the consumer product has been consumed;
- c. providing a means for the customer to have the package refilled with consumer product;

(See col. 1, lines 10-40.)

As described in Claims 2, 3, 9 and 12;

- d. the product is a liquid detergent (see abstract and figure 1);

As described in Claim 4;

- e. the point of purchase establishment is a mini-mart, department store, drug store or supermarket (see col. 1, lines 10-12);

As describe in Claim 5;

- f. the package is a bottle (see col. 1, lines 13 and 14);

As described in Claims 6 and 8;

- g. the bottle contains liquid detergent (see col. 1, lines 12 and 14);

As described in Claim 10;

- h. the package has an information device and is refilled by being placed in association with a refilling device having an information detector for reading information about the product off of the information device (see col. 3, lines 43-52;)

Brown further discloses the following.

(Note that the method of Brown discloses a customer buying an original container with detergent at an original price, then discounting subsequent refills at a price that reflects a certain discount based upon the lack of requirement for a container. Applicant's formula discloses prepaying for a set number of refills, where the original purchase price for the refillable container is discounted for the container originally bought, but no longer required for subsequent refills. See col. 2, lines 4-25 of Brown, noting that one refill is included in the sale price of the system of Brown. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed.)

Brown does not expressly disclose, but Maniwa discloses the following.

As described in Claim 1;

- i. *wherein the product is sold at a sale price that includes a predetermined number of refills;*

As described in Claim 11;

- j. the method satisfies the formula $P_0 < P_T + (P_T)N'$

Where $P_0 = P_T + (P_R)N$

P_0 = original purchase price of a consumer product

P_T = typical purchase price of a consumer product

P_R = refill price

N = a defined number of refills

N' = a defined number of purchases

$N=N'$

(Maniwa, abstract, describes a point-of-sale terminal with means to set a refill of a refillable product for set time bands, including the refill number.)

Both Brown and Maniwa are considered to be analogous art because Brown discloses repeatedly filling a bottle with detergent, each refill being at a set price and Maniwa describes prepaying for a set amount of "refills" for a set unit of time of a product.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have prepaid for a set number of refills.

The suggestion/motivation would have been to allow for a more efficient method to pay purchases and to reduce the individual cost of the material (detergent) refilled. See abstract of Maniwa.

Note also that Maniwa's teaching suggests that a specified number of refills are prepaid, because it mentions buying a finite number of refills for a particular time band.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Maniwa, and further in view of Duvall (US 5,522,428). Brown discloses the method as described above. Brown further discloses refilling a container/bottle a

number of times. See, for example, col. 2, lines 4-25. Brown does not expressly disclose, but Duvall discloses the following.

As described in Claim 7;

- k. the package is refilled a predetermined number of times, the predetermined number being less than a number of times that causes stress fractures in the package;

(Note that Duvall discloses in col. 1, lines 50-65, that cyclic filling and refilling of a container subjects said container to cyclic fatigue, noting also in line 52-54, that such a cyclic filling and refilling under pressure is life limiting to the container.

Both Brown and Duvall are considered to be analogous art because Brown discloses repeatedly filling a bottle at pressure and Duvall speaks to a cyclic fatigue life of such bottles.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have limited the number of refills based on the fatigue cycle life of the bottle under repeated pressurized fillings.

The suggestion/motivation would have been to prevent possibly dangerous or unwanted bursting of the container used for repeated fillings of detergent.

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4. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,578,763) in view of Rosenblum (US 6,766,218 B2). Brown discloses the following method for purchasing a consumer product.

As described in Claim 1;

- a. selling a consumer product (detergent) in a package (a bottle/container) to a consumer at a point of purchase establishment;
- b. instructing the consumer to retain the package after the consumer product has been consumed;
- c. providing a means for the customer to have the package refilled with consumer product;

(See col. 1, lines 10-40.)

As described in Claims 2, 3, 9 and 12;

- d. the product is a liquid detergent (see abstract and figure 1);

As described in Claim 4;

- e. the point of purchase establishment is a mini-mart, department store, drug store or supermarket (see col. 1, lines 10-12);

As describe in Claim 5;

- f. the package is a bottle (see col. 1, lines 13 and 14);

As described in Claims 6 and 8;

- g. the bottle contains liquid detergent (see col. 1, lines 12 and 14);

As described in Claim 10;

h. the package has an information device and is refilled by being placed in association with a refilling device having an information detector for reading information about the product off of the information device (see col. 3, lines 43-52;)

Brown further discloses the following.

(Note that the method of Brown discloses a customer buying an original container with detergent at an original price, then discounting subsequent refills at a price that reflects a certain discount based upon the lack of requirement for a container. Applicant's formula discloses prepaying for a set number of refills, where the original purchase price for the refillable container is discounted for the container originally bought, but no longer required for subsequent refills. See col. 2, lines 4-25 of Brown, noting that one refill is included in the sale price of the system of Brown. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed.)

Brown does not expressly disclose, but Rosenblum discloses the following.

As described in Claim 1;

i. *wherein the product is sold at a sale price that includes a predetermined number of refills;*

As described in Claim 11;

j. the method satisfies the formula $P_0 < P_T + (P_T)N'$

Where $P_0 = P_T + (P_R)N$

P_0 = original purchase price of a consumer product

P_T = typical purchase price of a consumer product

P_R = refill price

N = a defined number of refills

N' = a defined number of purchases

$N=N'$

(Rosenblum at col. 3, lines 8-27, describes a point-of-sale terminal with an automatic prescription dispensing system that allows patient requests for automatic refills and acceptance of credit, debit, smart and ATM cards or cash.

Both Brown and Rosenblum are considered to be analogous art because Brown discloses repeatedly filling a bottle with detergent, each refill being at a set price and Rosenblum describes prepaying for a set amount of "refills" for a set unit of time of a product.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have prepaid for a set number of refills.

The suggestion/motivation would have been to allow for a more "convenient" or efficient method to pay purchases and to reduce the individual cost of the material (detergent) refilled. See Rosenblum, col. 3, lines 8-11.

Note also that Rosenblum describes a patient requesting automatic refill of a prescription drug. One of ordinary skill in the art would have recognized that payment of

such refills could easily be paid by the payment means mentioned, such as credit or debit. The number of such refills included would have been a matter of design choice based upon the requirements of the prescription. For example, if a patient takes lisinopril, a blood pressure medication, on a regular basis of once a day, it would have been obvious to pay for several refills of say 30 such pills at a time to cover a monthly refill, and therefore pay for a year's worth of refills. Additionally, official notice is taken that buying such refills in advance provides for reduction of price for buying in bulk.

(10) Response to Argument

Applicant's arguments filed 8/8/05 have been fully considered but they are not persuasive. Regarding Applicant's claim language in Claim 1, "*wherein the product is sold at a sale price that includes a predetermined number of refills*", the system of Brown issues a coupon for each refill. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed. Maniwa discloses prepaying for a certain number of refills, as described above.

Brown discloses coupons for each refill subsequent to the original purchase, which includes the container. It would have been obvious to one ordinarily skilled in the art to have incorporated a "prepaid system" such as suggested by Maniwa so as to prepay for such refills, signified by the coupons, in Brown's system. Maniwa specifically states

"[a] POS terminal (1) executes the sales registration of the merchandise by an input operation accompanying merchandise sales and is provided with a means for setting the merchandise capable of the refill as refill specified merchandise, the means for registering the sales number of actually selling the refill specified merchandise and the refill number of refilling it for respective time bands and the means for outputting the sales number, the refill number and the service rate of the merchandise based on them for the respective time bands."

In other words, merchandise, such as Brown's detergent, which is prepaid by coupons, appears to lend itself directly to Maniwa's scheme of prepaying for a set number of refills for a respective time band. Therefore, it would have been obvious to apply the teaching/suggestion of Maniwa to the system of Brown. See also other prior art "prepaid" systems below.

Applicant asserts that Duvall does not provide a teaching regarding a set number of refills for a particular container for said detergent/liquid, based on a certain number of refills/pressurizations before container failure. Note that pressurizations of a container are considered, at the very least, to be a more severe failure requirement, but that this same condition is present in both Applicant's and Brown's systems. This condition concerns the repeated refilling of a single container which results in flexure of the sides of the container. Such flexure is due to force from something. This force appears to be from the liquid itself, if not the liquid along with an entraining gas, such as air. Such a force is considered to be in the form of "pressure" on the sides of the container. Even if it is argued that Applicant's system does not fill the container using pressurized liquid,

the fact that Duvall concerns the repeated flexure of the sides of a container is considered to be analogous to Applicant's system because Brown's system encompasses repeated fillings which could cause failure of the container after a certain number of fillings. Therefore, Duvall is considered to apply to Applicant's system, as described above.

Regarding Brown combined with Rosenblum, note that Brown provides the teaching for selling detergent with refills signified by coupons. Rosenblum simply discloses automatic refills and refill reminders for containers that are refilled. Brown's detergent container can be construed similarly as container that is refilled. One ordinarily skilled in the art would have been led to use Rosenblum's scheme for automatic refill requests and refill reminders that would replace the coupons in Brown's system, creating a more "convenient" or efficient method to pay purchases and to reduce the individual cost of the material (detergent) refilled. See Rosenblum, col. 3, lines 8-11.

Therefore, Rosenblum and Brown is considered to read on Applicant's claims as well.

It is therefore suggested that the rejection of Claims 1-13 be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

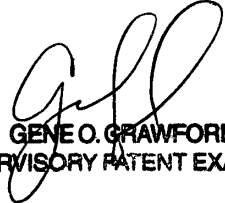


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